

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR. NO. 19-CR-4440 MV

NICHOLOUS PHILLIPS,

NOTICE OF INTENT TO OFFER EXPERT TESTIMONY

Pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C) and the Court's discovery order, the Defendant Nicholas Phillips (Mr. Phillips) hereby gives notice that it intends to introduce, during the defense presentation at trial, expert testimony and testimony that may arguably be considered expert testimony, as described in the following paragraphs. Mr. Phillips submits that the testimony of this expert witness is relevant to the issues to be tried before the jury in this case. Further, the Mr. Phillips submits that this testimony is admissible under Federal Rules of Evidence 702 and 703, and that this witness has "a reliable basis in knowledge and experience" in his respective discipline. As grounds, Mr. Phillips submits as follows:

Mr. Phillips plans to call Mr. Dan O'Kelly, a retired ATF Agent/Firearm Specialist and current Director, International Firearms Specialist Academy, Inc. to address and rebut testimony offered by the government's proposed expert witness, Daniel Hoffman, an ATF Firearms Enforcement Officer, regarding the issue of whether the partial pieces of a "firearm" discovered in Mr. Phillips' apartment on 15 November 2019 satisfy the definition

of a “firearm” under federal law. A copy of Mr. O’Kelly’s curriculum vitae has been provided to defense counsel.

By way of background, this Notice was filed after undersigned counsel was made aware, on 24 June 2020, of the government’s filing of its notice of intent to call an expert regarding this issue. After receiving said notice, undersigned counsel was referred to and consulted with Mr. O’Kelly regarding this matter and his availability as a proposed expert witness. In this regard, undersigned counsel has initiated the CJA approval process to authorize the retention of Mr. O’Kelly as an expert witness in this case. After Mr. O’Kelly is retained and completes his expert witness report, and the same will be forwarded to opposing counsel.

Respectfully Submitted:

By: /s/ Joe M. Romero, Jr.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June 2020, I filed the foregoing electronically through the CM/ECF system, and served the same to opposing counsel, AUSA Jaymie Roybal

By: /s/ Joe M. Romero, Jr.
Joe M. Romero, Jr.